

Any further consideration by the Board of the issues raised in the withdrawn application shall occur only upon the filing of a new application.

Subpart D—Consideration of Application, Denial of Relief, and Stay of Proceedings

§ 52.31 Consideration of application.

Each application shall be reviewed by the Chairman to determine whether it meets the requirements of § 52.21(c). The Chairman shall decide in appropriate cases whether to grant a hearing or to recommend disposition on the merits without a hearing.

§ 52.32 Denial of relief.

(a) The Chairman may, notwithstanding § 52.64, and without written findings and conclusions, deny in writing all requested relief to an applicant at any time prior to consideration of the applicant's case by a Board if:

(1) The information or evidence submitted by the applicant is insufficient to demonstrate probable substantial error or injustice;

(2) Effective relief cannot be granted by the Board;

(3) The Board does not have jurisdiction to determine the issues presented; or

(4) The application has not been timely filed under § 52.22 and the interest of justice does not require its acceptance.

(b) Denial of relief pursuant to this section is without prejudice to further consideration by the Board if the applicant requests further consideration and submits evidence in addition to that contained in his or her complete application. A request for further consideration shall be regarded as a new application for purpose of § 52.68.

(c) If relief is denied under this section, the applicant shall be advised of the right to further proceedings.

§ 52.33 Stay of proceedings.

An application to the Board for correction of a military record does not operate as a stay of any proceeding or administrative action taken with respect to or affecting the applicant.

Subpart E—Hearings

§ 52.41 General provision.

In each case in which the Chairman determines that a hearing is warranted, the applicant will be entitled to be heard orally in person, by counsel, or in person with counsel.

§ 52.42 Notice of hearing.

(a) If the Chairman determines that a hearing is warranted, the Chairman shall notify the applicant that a hearing has been granted.

(b) The date of hearing shall be not less than 21 days from the date of this notification. Written notice stating the date, time and place of the hearing shall be given to the applicant and the Coast Guard.

§ 52.43 Witnesses.

(a) In any case in which the Chairman has granted a hearing, the applicant shall have the right to present witnesses.

(b) It is the responsibility of the applicant to notify witnesses and to ensure their appearance at the date, time and place set for the hearing.

§ 52.44 Expenses.

No expenses of any nature whatsoever incurred by an applicant, his or her counsel, witnesses, or others acting on behalf of the applicant shall be paid by the Government.

§ 52.45 Nonappearance.

An applicant who fails without good cause to appear in person or by counsel at the appointed date, time, and place for hearing, is deemed to have waived the right to a hearing. The application is then considered by the Board on the basis of all the material of record.

Subpart F—Procedure at Hearings

§ 52.51 Conduct of hearing.

(a) The Chairman or the Chairman's designee shall conduct a hearing so as to ensure a full and fair presentation of the evidence.

(b) The hearing is not limited by legal rules of evidence but reasonable standards of competency, relevancy,

and materiality are observed for the receipt and consideration of evidence.

(c) All testimony shall be given under oath or affirmation.

§ 52.52 Record of hearing.

A hearing pursuant to this subpart in open session shall be recorded verbatim and, at the discretion of the Board or direction of the Secretary, shall be transcribed.

Subpart G—Judgment and Disposition

§ 52.61 Deliberations and decision.

(a) The Board is convened at the call of the Chairman and its meetings are recessed or adjourned by order of the Chairman. Only members of the Board and its staff may be present during the deliberations of the Board. The Board's deliberations are conducted in executive session and are not reported.

(b) When the Board finds that the facts have not been fully and fairly disclosed by the records, testimony, and any other evidence before the Board, the Board may request the applicant and/or the Coast Guard to obtain and submit such further evidence as it considers essential to a complete and impartial understanding of the facts and issues.

(c) An applicant may submit to the board any further evidence relevant to an application at any time prior to final action. The Chairman shall accept any such submission if, and only if, the applicant agrees that § 52.68 shall not apply to the case.

(d) Following the receipt of all evidence, the Chairman shall cause to be prepared and shall submit to the Board for its consideration a draft decision containing proposed findings and conclusions and a proposed order. A majority vote of the members of the board present at a meeting on any matter relating to a draft decision before the Board shall constitute the action of the Board. If a draft decision is approved by the Board, it shall become a decision of the Board.

(e) The decision of the Board shall specify with particularity any change, correction, or modification of records to be made by the Coast Guard, and

any other action deemed necessary to carry out the Board's recommendation.

(f) If the Board deems it necessary to submit a comment or recommendation to the Secretary as to a matter arising from, but not directly related to, the issues in a case, it does so by separate communication.

§ 52.62 Minority report.

In case of disagreement among Board members, a minority report may be submitted dissenting from or concurring with the decision of the Board.

§ 52.63 Record of proceedings.

The Board shall prepare a complete record of each proceeding. The record shall include the application for relief; the written views of the Coast Guard, if any; any transcript of testimony; affidavits and documents considered by the Board; briefs and written arguments filed in the case; the findings, decisions, and recommendations of the Board; minority reports, if any; and all other materials necessary to reflect a true and complete history of the proceedings.

§ 52.64 Final action.

(a) The Board, provided that it acts unanimously, may take final action on behalf of the Secretary, pursuant to 10 U.S.C. 1552, as follows:

(1) The Board may deny an application for the correction of military records.

(2) Unless the Chief Counsel of the Coast Guard, in submitting its views pursuant to § 52.82(c), states that the application involves a significant issue of Coast Guard policy, the Board may approve an application for the correction of military records in any of the following categories:

(i) An application to correct an enlistment or reenlistment contract or agreement to extend an enlistment for the purpose of effecting or increasing entitlement to a Selective Reenlistment Bonus;

(ii) An application to modify an election to participate in the Survivor Benefit Plan;

(iii) An application to change a reenlistment eligibility code;